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COUNTY OF LOS ANGELES and DEPUTY TRAVIS KELLY

(Defendants is exempt from filing fees pursuant to Government Code § 6103)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF,

Case No.: 2:22-cv-05367 RGK(MAAx)

Plaintiffs.

V

COUNTY OF LOS ANGELES;
SHERIFF DEPUTY BADGE
NUMBER 404532; And DOES 1
through 10,

Defendants.

**DEFENDANTS, COUNTY OF LOS
ANGELES AND DEPUTY TRAVIS
KELLY'S REPLY IN SUPPORT OF
APPLICATION TO CONTINUE TRIAL
AND PRE-TRIAL DEADLINES**

Action Filed: August 3, 2022

Pretrial Conference: July 10, 2023

Trial Date: July 25, 2023

Assigned to:

Hon. R. Gary Klausner, District Judge
Courtroom 850

All Discovery Matters Referred to:
Hon. Maria A. Audero, District Judge

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PLAINTIFF'S MISREPRESENTATIONS OF FACT**

3 Plaintiff's Opposition makes several key misrepresentations 1) Neither Defendant
4 made an expert witness disclosure on May 10, 2023; 2) Plaintiff properly noticed
5 Defendant Kelly's deposition for April 25, 2023; 3) Plaintiff properly noticed the
6 deposition of the persons most knowledgeable at COLA about certain relevant topics for
7 April 26, 2023; and 4) Plaintiff has always offered to work with Defendants in
8 rescheduling Defendants' depositions.

9 The truth is as follows: 1) both Defendants made their expert witness disclosure
10 on May 10, 2023; 2) Plaintiff did not properly notice either deposition of Defendant
11 Kelly or the deposition of the persons most knowledgeable at COLA – he did not meet
12 and confer with Defendants to request the deponents' availability and he further violated
13 FRCP 30(b)(6) by failing to "confer in good faith about the matters for examination,"
14 either before or promptly after the notice was served; and 3) Plaintiff's counsel has not
15 been cooperative or accommodating with respect to the discovery limitations, as
16 indicated by the fact that he proceeded with a non-appearance of these Defendants
17 despite having knowledge of their objections to the depositions and confirmation from
18 defense counsel that these depositions would need to be rescheduled.

19 **II. DEFENDANTS SHOULD NOT BE SUBJECTED TO SANCTIONS FOR**
20 **PLAINTIFF'S LACK OF PROFESSIONAL CIVILITY**

21 Plaintiff requests that is Court "entertain a motion by Plaintiff for issue or
22 evidentiary sanctions against Defendants for their failure to give discovery." However,
23 Defendants have never declined to give discovery in this action; rather, as demonstrated
24 by the Motion, Defendant Kelly has requested accommodations for this medical
25 condition to provide a deposition. In addition, Plaintiff did not properly notice and
26 confer, as required under FRCP 30.

27 Moreover, Plaintiff has not been diligent with discovery in this matter. After
28 requesting Plaintiff's availability for deposition multiple times, Defendants were forced

1 to unilaterally notice the deposition to proceed on March 24, 2023 after Plaintiff's
2 counsel failed to respond. Upon receipt of the notice, Plaintiff did not formally object to
3 appearing for his deposition, but Plaintiff's counsel informed the defense that the
4 deposition would not proceed as noticed. Unlike Plaintiff, however, Defendants did not
5 take a non-appearance; rather, Defendants chose to proceed civilly and professionally,
6 and work with Plaintiff's counsel to complete the deposition prior to the discovery cut-
7 off, based on his preference.

8 In contrast, Plaintiff’s counsel waited almost 5 months after Trial setting to
9 schedule Defendant’s deposition, and never once conferred with opposing counsel for
10 the deponents’ availability or the subject matter of the entity deposition, as required by
11 the rules. Then, upon receipt of both timely formal objections and notification from
12 counsel as to the unavailability of the deponents on the noticed dates, Plaintiff proceeded
13 with a non-appearance anyway.

14 While Plaintiff's counsel cannot be forced to be civil or professional, this Court
15 should certainly not reward his lack of diligence and courtesy with imposition of
16 sanctions against defense counsel.

18 | Dated: May 12, 2023

KJAR, MCKENNA & STOCKALPER, LLP

By: Molshree Gupta
PATRICK E. STOCKALPER
MOLSHREE GUPTA
Attorneys for Defendants,
COUNTY OF LOS ANGELES and DEPUTY
TRAVIS KELLY

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On May 12, 2023, I served the foregoing document described as **DEFENDANTS, COUNTY OF LOS ANGELES AND DEPUTY TRAVIS KELLY'S REPLY IN SUPPORT OF APPLICATION TO CONTINUE TRIAL AND PRE-TRIAL DEADLINES** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

By Mail I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX **By Email** Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is mnixon@kmslegal.com.

By Personal Service I caused such document to be Personally Served on the parties listed in the Service List.

XX **State** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 12, 2023, at El Segundo, California.



Maria Nixon

SERVICE LIST

Assiff, Joshua vs. County of Los Angeles, et al.

Central District- Case No.: 2:22-cv-05367 RGK(MAAx)

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